HONOURABLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HONOURABLE SRI JUSTICE R.SUBHASH REDDY

W.P.Nos.14099 and 19934 of 2003; 17113, 11877, 11312 and 12830 of 2004, 20572, 20126 of 2005

W.P.No.14099 of 2003

Between:

K.Rama Devi, W/o.K.L.N.Raju,
R/o.Visakhapatnam.

... PETITIONER

AND

State of Andhra Pradesh, Rep.by its Principal Secretary to Govt. Revenue Dept., Secretariat,
Saifabad, Hyderabad and others

...RESPONDENTS

…

::JUDGMENT::

Counsel for the Petitioners : Sri D.V. Sitaramamurthy

Sri Vilas V. Afzulpurkar

Sri Pratap Narayan Sanghi

Counsel for Respondents : Sri Addepalli Suryanarayana,
Govt. Pleader for Revenue

December 07, 2005

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Per G.S.Singhvi, CJ

The above noted petitions are being disposed of by a common order because the issues, which arise for determination by the Court are inter-related.

In two of the writ petitions, the petitioners have prayed for striking down Section 22-A of the Registration Act, 1908, as inserted by the Andhra Pradesh Act No.4 of 1999 (for short 'the Act'), and G.O.Ms.No.365 (Revenue-1) Department dated 30.5.2000 issued by the State Government in exercise of its power under Section 22-A of the Act.

In other petitions, the petitioners have challenged the vires of A.P. Registration (Prohibition of Registration of certain documents opposed to public policy) Rules, 1999 (for short 'the Rules') and have also prayed for quashing notifications dated 30-5-2000, 19-6-2000, 8.10.2001 and 6.6.2005 issued by the State Government under Section 22-A(1) of the Act.

For the sake of convenience, we have noticed the facts from Writ Petition No.17113 of 2004.

The petitioner Sri P.Murali Krishna Kant is said to have purchased Plot No.62/3, Survey No.74/9, situated at Shantiniketan, East Marredpally, Secunderabad from M/s.Venkatesh Properties vide sale deed dated 29.5.2004. Vide letter dated 18.8.2004, Sub-Registrar, Marredpally refused to register the document in view of the Government notification dated 19-6-2000.

In other petitions, the concerned authorities refused to register the sale-deeds etc., presented by the petitioners in view of the prohibition contained in Section 22-A (1) of the Act and notifications issued by the Government.

The petitioners have challenged the constitutionality of Section 22-A primarily on the ground that the provision contained therein is wholly arbitrary, capricious, unreasonable and unjust and it seeks to deprive the purchasers of the properties of their legitimate right to get the document registered. According to the petitioners, the expression 'public policy' appearing in Section 22-A(1) of the Act is too vague and fanciful and confers uncanalised power on the executive authorities to refuse registration of the document. The petitioners have also challenged Rule 2 (b) of the Rules and the notifications issued by the State Government on similar grounds.

We have heard the learned counsel for the parties. Sri Vilas V. Afzalpurkar and Sri D.V. Sitaram Murthy invited our attention to the judgment of the Supreme Court in ***State of Rajasthan and others vs. Basant Nahata*** to show that Section 22-A of the Act, as amended by the State of Rajasthan by Act No.16 of 1976 has been treated as unconstitutional and argued that Section 22-A of the Act, which is in *pari materia* to Section 22-A enacted by the State of Rajasthan should be declared as unconstitutional. Learned counsel submitted that the impugned provision does not contain any legislative policy and is therefore liable to be struck down being an arbitrary and unconstitutional piece of legislation. They further argued that the rules framed by the State Government for implementation of the provisions of Section 22-A of the Act and the notifications issued from time to time prohibiting registration of the documents, are also liable to be struck down.

Learned Special Government Pleader fairly stated that the language of Section 22-A of the Act is identical to the similar provision enacted by the Legislature of the State of Rajasthan and that the said provision has been found by the Supreme Court to be unconstitutional, but argued that the Court may not strike down the provision impugned in these petitions because the legislative policy underlying Section 22-A is discernible from the rules framed by the State Government and the notifications issued from time to time. Learned Special Government Pleader also invited our attention to para 70 of the judgment of the Supreme Court in ***State of Rajasthan vs. Basant Nahata*** (supra) and submitted that the orders passed by the Sub-Registrar and other competent authorities refusing registration of the document pursuant to the notifications impugned in these petitions

may not be reopened. In the end he submitted that even if the Court is inclined to strike down Section 22-A of the Act, the interim orders passed earlier may be continued for a period of two months so as to enable the State to approach the Supreme Court.

Section 22-A of the Act, as inserted by A.P. Act No.4 of 1999 reads as under:

> **"Documents registration of which is opposed to public policy –** (1) The State Government may**,** by notification in the Official Gazette, declare that the registration of any document or class of documents is opposed to public policy.
>
> 2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under sub-section (1) is applicable."

Section 22-A (as amended by Rajasthan Act No.16 of 1976) also reads as under.

> **"Documents registration of which is opposed to public policy –** (1) The State Government may by notification in the Official Gazette, declare that the registration of any document or class of documents is opposed to public policy.
>
> 2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under sub-section (1) is applicable."

A bare reading of the above reproduced provisions shows that the same are identical. The Rajasthan amendment was struck down by a Division Bench of that High Court. On appeal, the Supreme Court upheld the decision of Rajasthan High Court and laid down the following propositions:

i) "Public policy is not capable of being given a precise definition. What is 'opposed to public policy' would be a matter depending upon the nature of the transaction. The pleadings of the parties and the materials brought on record would be relevant so as to enable the Court to judge the concept as to what is for public good or in the public interest or what would be injurious or harmful to the public good or the public interest at the relevant point of time as contra-distinguished from the policy of a particular Govt. A law dealing with the rights of a citizen is required to be clear and unambiguous. Doctrine of public policy is contained in a branch of common law, it is governed by precedents. The principles have been crystallised under different heads and though it may be possible for the Courts to expound and apply them to different situations but it is trite that the said doctrine should not be taken recourse to in 'clear and incontestable cases of harm to the public though

the heads are not closed and though theoretically it may be permissible to evolve a new head under exceptional circumstances of a changing world.'

ii) The Act only strikes at the documents and not at the transactions. The whole aim of the Act is to govern documents and not the transactions embodied therein. Thereby only the notice of the public is drawn.

iii) S.22-A of the Act through a subordinate legislation cannot control the transactions, which fall out of the scope thereof. A subordinate legislation which is not backed up by any statutory guideline under the substantive law and opposed to the enforcement of a legal right, thus, would not be valid. In absence of any substantive provisions contained in a parliamentary or legislative act, a person cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under S.300-A of the Constitution of India.

iv. A thing which itself is so uncertain cannot be a guideline for anything or cannot be said to be providing sufficient framework for the executive to work under it. Essential functions of the Legislature cannot be delegated and it must be judged with touchstone of Art.14 and Art.246 of the Constitution of India. It is, thus, only the ancillary and procedural powers which can be delegated and not the essential legislative point. A legislative policy must conform to the provisions of the constitutional mandates. Even otherwise, a policy-decision can be subjected to judicial review.

v. The contention raised on behalf of the appellants herein that the State, being higher authority, having been delegated with the power of making declaration in terms of Section 22-A of the Act, would not be abused is stated to be rejected. Such a question does not arise herein as the provision has been held to be *ultra vires* Articles 14 and 246 of the Constitution of India.

By following the ratio of the aforementioned decision of the Supreme Court, we hold that Section 22-A of the Act, as inserted by Andhra Pradesh Amendment Act 4 of 1999, is violative of
Article 14 read with Article 300-A of the Constitution of India and is liable to be struck down.

As a sequel to striking down of Section 22-A, the Rules framed by the State of Andhra Pradesh for giving effect to the said provision and the notifications issued in exercise of the power conferred thereunder are also liable to be quashed.

In the result, the writ petitions are allowed. Section 22-A of the Act, as inserted by Andhra Pradesh Amendment Act 4 of 1999, is declared unconstitutional

and are struck down. Rule
2 (b) of the rules and notifications impugned in these petitions are also struck down and quashed.

However, it is made clear that this order shall not have the effect of invalidating the orders already passed by the competent authorities refusing to register the documents in pursuance of notifications issued under Section 22-A (1) of the Act. Of course, the aggrieved person shall be free to avail appropriate legal remedy against such order(s).

While disposing of the writ petitions in the manner indicated above, we accept the request of the learned Special Government Pleader and direct that the interim orders passed in these petitions shall remain operative for a period of two months from today.

G.S.SINGHVI, CJ

Dt.7.12.2005

R.SUBHASH REDDY, J

msv/svs/vtv